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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,258	12/16/2006	Frode Liland	PROT0102PUSA	6006
22045	7590	10/09/2009	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			FERNSTROM, KURT	
			ART UNIT	PAPER NUMBER
			3711	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/595,258	Applicant(s) LILAND ET AL.	
	Examiner Kurt Fernstrom	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/20/06, 12/12/07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

Claim 13 objected to because of the following informalities: “Back” is misspelled, due to an apparent typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites a “back pressure means”. Under 35 USC 112, ¶6, “means plus function” language is to be interpreted in light of the specification, to determine whether the prior art discloses or suggests an apparatus as described in the specification which performs the same function in substantially the same way. However, such language must be recited as a “means **for**” performing the function. As recited in claim 1, it is not clear whether applicant is intending to invoke the provisions of 35 USC 112, ¶6. Further, it is not clear whether the back pressure means is being recited as part of the claim. Claim 1 recites a passage “designed to provide communication” between an air source and a back pressure means. “Designed to” is functional language, describing the intended purpose of the invention. Clarification is requested. As such, recitations of “the back pressure means” in the dependent claims

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lack clear antecedent basis. Claim 12 in particular recites a “back pressure device”, which was never recited in claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Breakspear (US 3,274,705). As noted above, claim 1 contains numerous instances of functional language describing the intended purpose of the device. The only features positively recited in the claim are a first passage and a second passage. Breakspear reads on these features. With respect to claims 12-16, the claims limit an element which is not clearly recited as being part of the claimed invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breakspear in view of Bowden (US 6,296,490). Breakspear discloses the

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limitations of claim 2 with the exception of the third passage providing communication to the surroundings. This feature is known, as disclosed for example by Bowden (passage 9). It would have been obvious to one of ordinary skill in the art to modify the teachings of Breakspear by providing a passage to the surroundings as disclosed by Bowden for the purpose of venting air out of the system as desired. With respect to claim 3, Bowden discloses indicators 13 and 18 as recited. These elements would have been obvious for the purpose of monitoring the performance of the system. With respect to claim 4, the elements recited are considered to be an obvious variation on the teachings of Bowden. With respect to claims 5, 6 and 11, elements 11 of Bowden can be considered to be back pressure means in the form of artificial lungs, and also are inherently restrictions. With respect to claim 10, it is well known to provide a mask which covers the mouth and nose, as shown in Figure 1 of Bowden.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Breakspear. Breakspear discloses the limitations of the claims with the exception of the recited configurations of the passages. The elements recited are considered to be obvious variations on the teachings of Breakspear, serving essentially the same purpose.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gonzalez, Flynn, Adamson, Huszczuk, Ratner and Loughlin disclose various simulators.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kurt Fernstrom/
Primary Examiner, Art Unit 3711

October 7, 2009